

NTSB Order No. EA-4295

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of November, 1994

Docket SE-13385

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on February 17, 1994, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 135.227(a)(1) and (a)(2).² The

²§ 135.227(a)(1) and (a)(2) read as follows:

law judge affirmed the Administrator's proposed 30-day suspension of respondent's airline transport pilot certificate. We deny the appeal.

Respondent was the pilot-in-command (PIC) of a GP Express flight that departed from Lincoln, NE the morning of December 18, 1992. The aircraft, a Beechcraft 1900-C, had landed at Lincoln at approximately 8:57 A.M. Respondent testified that, in the descent to Lincoln, he had anticipated icing, given the weather conditions.³ In fact, he testified, they actually experienced some ice buildup that was removed by the aircraft's pneumatic boot. Tr. at 71. Within approximately 3 minutes of landing, the aircraft taxied to the gate, disembarked some passengers, and turned around for departure. Deicing was not performed. The aircraft took off from Lincoln at approximately 9:08-9:10.

An FAA inspector, at the airport at the time to observe deicing procedures generally,⁴ testified that there was ice on
(..continued)

(a) No pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade, propeller, windshield, wing, stabilizing or control surface, to a powerplant installation, or to an airspeed, altimeter, rate of climb, or flight attitude instrument system, except under the following conditions:

(1) Takeoffs may be made with frost adhering to the wings, or stabilizing or control surfaces, if the frost has been polished to make it smooth.

(2) Takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the Administrator.

³Exhibit C-4 showed the official weather at Lincoln at the time as light rime ice.

⁴He arrived at approximately 9:10-9:15 A.M.

the ramps and sidewalks, and that the weather was a freezing rain. He stated that aircraft coming in were ice covered and that even his eyeglasses were picking up ice. Tr. at 24-25. The inspector was told by the flight crew of another aircraft that the GP Express aircraft had left without deicing. To follow up on this information, the inspector sought out Dave Mock, an employee of a company that performed gate and ticketing functions for GP Express at this airport.⁵ Mr. Mock advised (and testified at the hearing) that he observed ice on various portions of the aircraft. Mr. Mock had annotated a service record for this GP Express flight with the comment "did not deice," although he also testified that he did not report the ice he saw to respondent or his first officer because he thought it was obvious to both.⁶ Mr. Mock stated that, when the aircraft left the gate, a chunk of ice the size of a fist fell off the end of the aircraft's wing. Tr. at 53.

Respondent testified that he saw ice on a spinner, but saw none on the leading edges of the wings. He stated that, from his seat in the aircraft (he had not left the aircraft, and had remained sitting in the left seat the entire period), he could

⁵There is some confusion in the record regarding the name of this company. It is referred to as both Trans States Airlines and Trans World Express. On request, it and another company at the airport were available to perform deicing services. Neither had a contract to do so.

⁶Mr. Mock testified that the first officer was standing next to him outside the aircraft and had a clear view of the ice, and that respondent, sitting in the aircraft, could have seen the ice build-up around the edge of the windshield. Tr. at 45, 55.

see the left wing clearly and could see the right wing from the spinner outward. He also testified that no one, including his first officer, told him of any ice on the aircraft. The first officer testified that he walked around a part of the aircraft and saw no ice, whether on the spinner, the tail, or elsewhere.⁷

The law judge, after observing these witnesses and weighing their credibility, determined that the Administrator's witnesses were more credible. Tr. at 154.⁸ The law judge rejected respondent's legal argument that he had reasonably relied on his first officer.

Respondent's pursuit on appeal of his reasonable reliance argument does not withstand scrutiny. In Administrator v. Fay & Takacs, NTSB Order EA-3501 (1992), we reviewed our precedent in this area and explained (at page 9):

As a general rule, the pilot-in-command is responsible for the overall safe operation of the aircraft. If, however, a particular task is the responsibility of another, if the PIC has no independent obligation (e.g., based on operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found.

Respondent did not establish that a walkaround to look for icing was the responsibility of the first officer. But, even if that fact is assumed, respondent may not prevail. First,

⁷Mr. Mock testified, in contrast, that the first officer did not leave the area between the stairs from the aircraft and the left propeller.

⁸In doing so, the law judge took into account respondent's contentions that Mr. Mock and the FAA inspector were biased against respondent and/or GP Express.

respondent physically had the ability to see ice on the aircraft.

Second, we agree with the law judge's conclusion that respondent had reason to investigate to assure himself that there was no ice on the aircraft. He had, bare minutes before, flown through conditions that, by his own testimony, produced ice on the aircraft. The weather on the ground was no better, and the weather report was for rime ice. It defies good sense that respondent and his first officer had no conversation regarding ice, but even if this were true, respondent cannot avoid responsibility by failing to ask questions that a reasonable and prudent man would ask or by assuming, from the silence of a first officer, that no frozen precipitation of consequence was on the aircraft.

Respondent also argues that the record does not support the law judge's finding of ice. The Administrator's eyewitness testified that, immediately before takeoff, he saw ice on a number of flight surfaces covered by the regulations, and there was independent evidence supporting such a conclusion. We have no basis to overturn the law judge's acceptance of this testimony, based as it is on credibility determinations.⁹ Mr. Mock's failure to report what he saw to the first officer, while

⁹We note that respondent's testimony can also be read as inconsistent. See Tr. at 75 (compare testimony that aircraft was not deiced in Lincoln because there "wasn't enough ice to be deiced" and response of "no" to question "did you observe any ice accumulation on the aircraft?"). The testimony of respondent and his first officer was also inconsistent on the question of where the first officer stood when outside the aircraft. Compare Tr. at 72-73 and 105.

not a course we would recommend, does nothing to mitigate respondent's own omissions and does not justify rejecting that testimony, nor does his company's interest in deicing GP Express aircraft. In fact, it could reasonably be argued that Mr. Mock's actions were against the interests of his employer in obtaining GP Express business and, therefore, entitled to greater credibility.

In connection with his challenge to the sufficiency of the evidence, respondent claims specifically that the law judge had insufficient evidence to find a violation of § 135.227(a)(1) because the testimony only supports a finding of ice on the frame around the windshield, not ice on the windshield, and that only the latter is prohibited by the regulation. Such a distinction is not merited by the rule or a reasonable interpretation of it.

The term "windshield" reasonably includes the frame. Moreover, respondent's theory ignores the clear purpose of the rule.

Respondent is obliged not to fly with ice on the aircraft that will compromise its performance. Regardless of whether there was ice on the windshield, the preponderance of the evidence supports a conclusion that there was ice on the wings (also specifically prohibited by the rule). Respondent's actions created an unnecessary aviation safety risk.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.¹⁰

HALL, Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹⁰For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).